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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 445

AVCO CORPORATION, *Petitioner,*

v.

AERO LODGE NO. 735, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, ET AL., *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

Brief for The Chamber of Commerce of the United States and American Trucking Associations, Inc. as Amici Curiae

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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STATEMENT OF INTEREST[1]

The Chamber of Commerce of the United States is a federation of over 3,700 national, local and state chambers of commerce and trade and professional associations. The National Chamber has a direct membership of more than 33,000 business firms and an underlying membership

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[1] This brief is filed with the written consent of both parties, pursuant to Rule 42(2) of the court's rules.

of approximately 5,000,000 business firms and individuals. It is the largest association of business and professional organizations in the United States.

American Trucking Associations, Inc. is a national organization representing the motor freight industry on whose behalf it customarily appears before federal agencies and, where issues of national importance are involved, before the federal courts.

Many thousands of the employers represented by the National Chamber and American Trucking Associations are parties to collective bargaining agreements which fix the terms and conditions of employment for many hundreds of thousands of employees. This court's decision in the present case will affect a great many of these agreements and will determine, in a critical respect, the extent to which they are effective instruments to achieve stability in industrial relations.

ARGUMENT

Introduction

It seems impossible to over-emphasize the seriousness of the error committed in this case by the court below. The decision reached by that court, and by the federal district courts that have reached the same result, undermines—indeed, it reverses—the intent of Congress in enacting § 301 of the LMRA. It demeans the role of the states in an area where Congress had no purpose at all to demean it, but on the contrary intended to supplement and support it. It misreads the vastly important opinions of this court dealing with § 301. Without justification in law or equity it insulates from the sanction of an injunction, granted by many states, breaches by unions and/or employees of solemn pledges they give in their collective bargaining contracts not to strike or picket over their grievances, but rather to arbitrate them, during the term of the contract.

Almost all of Judge Celebrezze's opinion for the court below denying remand, which is very similar to the opinions of the district courts which deny remand, is devoted to an argument in favor of the conclusion that the employer's suit in the state court comports with the provisions of § 1441(b) of the removal statute, i.e., that it is a civil action (a) "arising under the . . . laws of the United States" of which (b) "the district courts have original jurisdiction," and thus that the suit can be removed to federal court. But the implication of this conclusion is very troubling indeed. The implication is that, since the federal court cannot issue an injunction against the strike in breach of contract the employer can be deprived of his only effective remedy, which is available to him in the state court, simply by virtue of the removal statute which could never have been intended to have so profound and unlooked for an effect. Apparently sensing how very troubling this implication is, the court shifts its ground. It raises the specter of non-uniformity. It states:

> "If remand is granted, State Courts would become the preferred forum for adjusting breaches of no-strike clauses in collective bargaining agreements in industries affecting interstate commerce. Not only would this undermine a uniform development of the law, but the availability and effectiveness of the injunctive remedy would vary from State to State. Consequently, in order to achieve this uniformity in application, the remedies available in State Courts are limited to the remedies available under Federal law."

The conclusion of no remand follows immediately.

Thus, the court below says that the removal statute has the practical effect of nullifying state court jurisdiction to issue an injunction, but that this startling application of the removal statute is not, in fact, as drastic as it would appear, because even though the removal statute has this effect, or even if it does not, nothing is lost since the state court could not, by reason of § 301, grant an injunction after all.

The court below justifies this enormously important conclusion—that § 301 took away from the states their right to enjoin strikes in breach of contract—by citation, and very brief quotation and discussion, of two cases, *Sinclair*[2] and *Lucas Flour*[3], and by nothing else. But these cases do not support the conclusion. A proper analysis of these cases—and of other cases and of the statute and its legislative history, mostly ignored by the court below—shows clearly that the states were not ousted by § 301 of their jurisdiction to issue injunctions against strikes in breach of contract. We proceed now to demonstrate in detail that this is so. We thus pass for the present a discussion of the removal question, which, in the final analysis, is wholly bound up with the issue of the effect of § 301 on state court jurisdiction to enjoin strikes in breach of contract.

I

Section 301 Does Not Withdraw State Court Jurisdiction To Enjoin Strikes in Breach of Contract.

The *Sinclair* case does not, contrary to the view of the court below, support the conclusion that § 301 has withdrawn the jurisdiction of states to enjoin strikes in breach of contract. The essence of the ruling in that case is this *and only this:* Congress in passing § 301 did not expressly, or by any intimation or implication that may be drawn from the language or legislative history of the statute, overrule or modify the Norris-LaGuardia Act, and thus § 301 did not return to the federal courts any of the jurisdiction which Norris-LaGuardia withdrew from them. It seems to us indisputable that the converse of the ruling that Norris-LaGuardia was not *restricted* by § 301 is and has to be that it was not *extended* by it either. In other words, when it enacted § 301 Congress left the Norris-La-

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[2] *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195 (1962).

[3] *Teamsters Local 174* v. *Lucas Flour Co.,* 369 U.S. 95 (1962).

Guardia Act exactly where it found it. Thus employers, if they want Norris-LaGuardia restricted in its application in § 301 cases in the federal courts, must go to Congress to get specific authorization for such restriction. By the same tokens, unions, if they want Norris-LaGuardia extended to the state courts, must go to Congress to get specific authorization of such extension. See also Lesnick, *State-Court Injunctions and the Federal Common Law of Labor Contracts: Beyond Norris-LaGuardia,* 79 Harv. L. Rev. 757, 759-760 (1966):

> "Since a uniform rule *permitting* specific enforcement of no-strike clauses was rejected, not as a result of the Court's own fashioning of an appropriate rule of federal labor law, but simply in obedience to the legislative mandate that federal judges not enjoin strikes, that rejection (proper though it was) should not now be parlayed with a revived interest in practical accommodations and judicial creativity to compel the states to obey a mandate never addressed to them." [Footnotes omitted].

The other case relied on by the court below for its conclusion that § 301 took away state court equity jurisdiction in no-strike clause cases is *Lucas Flour.* That case and its forbear, *Lincoln Mills,*[4] stand for two related but distinct propositions. Stated in a shorthand which, given the complexity of the subject, is drastically over-simplified, the two propositions are (1) that § 301 law as fashioned by the Congress and the courts is "federal" law and (2) that there must be a certain "uniformity" in the content and application of that law. From nothing more than this over-simplified shorthand the court below, and other courts that have denied remand, drew two related but distinct conclusions. The first conclusion is that, because there is a federal statute (The Norris-LaGuardia Act) which withdraws from the federal courts jurisdiction to issue injunctions, this statute must be part of the federal law of § 301

[4] *Textile Workers v. Lincoln Mills,* 353 U.S. 448 (1957).

applicable in state and federal courts alike. The second conclusion is that in order to serve the principle of uniformity the restriction on injunctions against strikes in breach of contract imposed upon the federal courts must be extended to the state courts.

These two facile conclusions have, to be sure, a surface appeal, especially to unions or employees acting in defiance of their union who have violated, or have it in mind to violate, their pledge to arbitrate their grievances rather than to strike over them. But they cannot withstand analysis. Specifically, the "federal law" principle properly understood does not support the conclusion that Norris-LaGuardia is part of § 301 law, and the "uniformity" principle properly understood does not support the conclusion that § 301 withdraws state court equity jurisdiction in no-strike clause cases.[5]

This court in *Lincoln Mills* recognized that no pat formula governs the task of deriving and applying federal law in § 301 cases. 353 U.S. at 457. It also recognized, and *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502 (1962), confirmed, the important role to be played by state law and the state courts in shaping and applying the federal law of § 301.[6] Nothing in the language of *Lincoln Mills* makes either necessary or appropriate the addition to

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[5] Lesnick, *State-Court Injunctions and the Federal Common Law of Labor Contracts: Beyond Norris-LaGuardia*, 79 Harv. L. Rev. 757, 758 (1966): "Section 301, it is clear, does apply to state courts. *Local 174, Teamsters Union* v. *Lucas Flour Co.*, 369 U.S. 95 (1962). I believe, however, that the federal law of Section 301 should not be held to 'incorporate' the Norris-LaGuardia Act's prohibitions on injunctions against strikes in breach of contract. Of course Norris-LaGuardia is 'federal law,' and 'federal law' controls. But to settle the question so simply comes close to adjudication by pun."

[6] Compare the following statement of the court below: "Federal Courts are solely responsible for developing a single, consistent body of Federal labor law."

§ 301 law of the Norris-LaGuardia restrictions on federal court jurisdiction.[7] Nor does anything in that case justify the simplistic assumption that the Norris-LaGuardia Act was made a part of § 301 by Congress or must be made a part of it by the courts merely because it is a federal statute in the labor law field. Furthermore, and most important of all, *Lincoln Mills* and its progeny teach that the heart and soul, and indeed virtually the whole content of the federal law of § 301, is the promotion of the enforcement of contracts and the settling of contractual disputes by peaceful means. The peaceful method of settling disputes that Congress had most in mind was arbitration, to be supported and confirmed by court action. Federal court jurisdiction was added to existing state court jurisdiction by Congress to promote, not to debilitate—and the state and federal courts were charged by Congress to promote, not to debilitate—the enforcement of contracts and the peaceful settlement of contractual disputes. Thus the presumption is wholly against the withdrawal by Congress from the state courts of the right to enjoin strikes in breach of contract absent an explicit withdrawal of that right. There is no explicit withdrawal of that right either in the language or the legislative history of § 301. On the contrary, as the other briefs in this case which seek reversal of the court below show, and as *Dowd Box* also shows, the evidence in the statute and the legislative history is all the other way, and very affirmatively so.

As for the "uniformity" principle: That principle, as espoused in *Lucas Flour* and succeeding cases, does not at all require that state courts be denied the right to issue injunctions against strikes in breach of contract simply because federal courts are without jurisdiction to do it, or for any other reason. This court's reasoning in *Lucas Flour* respecting uniformity was predicated upon the

[7] And, indeed, as we have shown, *Sinclair*, properly read, shows affirmatively that Norris-LaGuardia is not a part of § 301 law.

proposition that parties to a collective bargaining agreement could not tolerate a situation in which they could not be sure what their rights and duties under the agreement were, or if they were negotiating an agreement, what they were agreeing to. The fact that the injunctive remedy for breach of the no-strike clause is available in one court and not in another does not present that problem. Furthermore, *Lucas Flour* and succeeding cases in which the uniformity principle was invoked show that the essential purpose of the principle is to serve the basic substantive purpose of § 301 law, namely, promoting the enforcement of contracts and settlement of disputes by peaceful means. The court below wholly misconstrued the uniformity principle when it gave it the barren content of uniformity for uniformity's sake and invoked it in the service of a result which frustrated rather than promoted the basic statutory purpose. *UAW* v. *Hoosier Cardinal Corp.*, 383 U.S. 696 (1966), not cited by the court below, should have laid to rest any notion that the uniformity principle means uniformity for uniformity's sake. Neither § 301 nor any of the cases which interpret it require the tidy and altogether pointless uniformity which the court below found to be unavoidable.

The neglect by the court below of the *Dowd Box* case is noteworthy. The court gave the case grudging recognition in a single sentence: "While State courts may [sic] have concurrent jurisdiction they are bound to apply Federal law." It must be said that had the court given the case the attention it demands and deserves, it could not have come so easily to the conclusion it reached, or, indeed, have reached it at all. The case, which analyzes the legislative history of § 301 at great length, compels the conclusion that Congress, by giving the federal courts jurisdiction in collective bargaining contract cases and in the process imposing upon the courts, state and federal, the duty of fashioning federal law to promote the fair and peaceful enforcement and administration of those con-

tracts, had in mind *not at all* to take away from the state courts any of the jurisdiction they already possessed in this area to carry out that purpose. It shows clearly that Congress intended simply to add to the means of carrying out that purpose by giving jurisdiction to the federal courts in order to fill a jurisdictional gap which existed in some state courts, so that unions and employees would nowhere be immune from judicial review and enforcement of their obligations under collective bargaining contracts.

In *McCarroll* v. *Los Angeles County District Council of Carpenters,* 49 Cal. 2d 45, 315 P. 2d 322 (1958) *cert. denied,* 355 U.S. 932 (1958) which forecast this court's rulings in *Lucas Flour, Dowd Box,* and *Sinclair,* Justice Traynor stated the matter with complete justice and accuracy:

> "We would give altogether too ironic a twist to this purpose if we held that the actual effect of the legislation was to abolish in state courts equitable remedies that had been available, and leave an employer in a worse position in respect to the effective enforcement of his contract than he was before the enactment of section 301."

The court below viewed with disfavor the prospect that, assuming the continuing existence of state court equitable jurisdiction and/or the obligation of federal courts to remand removed collective bargaining contract cases, "State Courts would become the preferred forum for adjusting breaches of no-strike clauses." No doubt an employer, if a strike in breach of a no-strike clause lasts any length of time, will contest the breach in a state court rather than a federal court where the state grants the injunction remedy. But this is wholly *consistent* with the concurrent jurisdiction enacted by Congress and recognized by *Dowd Box.* It would not, in the words of the court below, "undermine a uniform development of the law." Any suggestion that the state courts are more likely to

misconceive or misapply § 301 law in interpreting no-strike provisions than are the federal courts, and thus must not be trusted with the task of interpreting them, is wholly *inconsistent* with the concurrent jurisdiction enacted by Congress and recognized by *Dowd Box*. Section 301 cases in this court since *Lincoln Mills* show that there has been no greater (or lesser) misunderstanding or misapplication of § 301 law by the state courts than by the federal courts. The cases show the state courts are no less hospitable to the principles of *Lincoln Mills* and *Lucas Flour* than the federal courts. They also show that this court, acting wholly in the spirit of *Dowd Box*, harbors no presumption that the state courts are or will be less hospitable to this court's mandates in this area than will the federal courts.

To the extent that a judgment that it would be better for state courts not to have the power to enjoin strikes in breach of contract, lest they on occasion mistakenly or invidiously abuse it, underlies the decision of the court below and other courts that have denied remand, see *Tri-Boro Bagel Co.* v. *Bakery Drivers Union*, 228 F. Supp. 720 (D.C.E.D.N.Y. 1963), the response must be that Congress not having made that judgment the courts may not act on it. See *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. at 214-215. Moreover, we should suppose that, where a union and its members have pledged not to strike or picket over their grievances, and then do so, the presumption would be in favor of prompt and effective sanctions to enjoin the breach. Considering how great is the breadth of the undisputed state court jurisdiction in the area of interpretation and enforcement of collective bargaining contracts, and considering also the fact that the state courts have undisputed jurisdiction to issue injunctions against strikes and picketing in certain instances, i.e., to restrain violence, *Youngdahl* v. *Rainfair*, 355 U.S. 131 (1957), there is no basis for any contention that the courts should, in contravention of the intent of Congress, mistrust the states to make proper application consistent with § 301 of the

injunction remedy against breaches of no-strike clauses. There is no indication in the present case, for instance, that the union considered the strike not to be in breach of the contract. When it removed the case to the federal court it appears to have done so only in order to take advantage of what it saw as a procedural nicety which exonerated it from the injunctive sanction against the breach of its contractual obligation, not to defend itself from an unjust injunction. Moreover, it is undoubtedly the case, as distinguished representatives of unions have stated, that few of the strikes which are alleged to be in violation of contract are authorized, sanctioned or supported by the bargaining representative. *Report of Special Atkinson-Sinclair Committee,* in ABA Section of Labor Relations Law Proceedings, Part II, 226, 233 (1963). It would seem that, far from being mistrusted, state court injunctive sanctions against such strikes should be encouraged. A prompt and effective injunction against a wildcat strike and picketing is often as important to the union as it is to the employer, for it enables or assists the union to discharge its contractual obligations and to reassert its position as the exclusive bargaining agent.[8]

The court below, wrestling with its self-created dilemma caused by its misreading of the *Sinclair* case and apparently troubled by the vacuum that its decision, if upheld, would create, said in a footnote, citing *Sinclair:* "An employer may obtain an order directing a Union to comply with its agreement to arbitrate. A strike in the face of such an order could result in contempt proceedings." Other commentators who, like the court below, oppose state court injunctions against breaches of no-strike clauses as contrary to § 301 or as otherwise somehow unfitting, but who are also troubled by the implications of their position, suggest the possibility of other alternatives. Aaron, *Strikes in Breach of Collective Agreements: Some Unanswered Questions,* 63 Colum. L. Rev. 1027, n. 84 (1963). It may

[8] In this connection, the union's three week delay in seeking removal after the issuance of the state court injunction in this case (A. 10, 11) appears to be worthy of note.

be anticipated that the unions appearing in this case will suggest still other alternatives. Yet all such proposals raise problems at least as serious as those said to be raised by state court injunctions, as for example, whether the proposed solution will be effective, whether it comports with the collective bargaining contract it is meant to defend, or whether it is any more exempt from the strictures of the Norris-LaGuardia Act than is the state court injunction procedure. See *International Longshoremen's Association, Local 1291* v. *Philadelphia Marine Trade Assoc.*, — U.S. — (Nov. 6, 1967). Furthermore, none of the proposed "solutions" can fairly be said to be any more consistent with the purpose of § 301 than the state court injunction procedure, which is perfectly consistent with it and which, as cannot be said too often, Congress has not challenged or restricted in any way.

II

The Court Below Erroneously Read the Removal Statute To Defeat the State Court's Jurisdiction To Enjoin the Strike in Breach of Contract.

We submit that the conclusion is inescapable that when Congress, in furtherance of its policy of promoting enforcement of collective bargaining contracts and settlement of contract disputes by peaceful means, made the federal courts an additional forum for suits for violation of such contracts, it had no purpose whatever to deprive state courts of the undoubted jurisdiction they possessed in this area, but intended only to supplement that jurisdiction. We have shown that *Lincoln Mills, Lucas Flour, Dowd Box* and *Sinclair* affirmatively support this proposition. To read the removal statute, as the court below did, to defeat state court jurisdiction to enjoin strikes in breach of contract, and thereby to deny the remedy, clearly defeats the Congressional purpose. *American Dredging Co.* v. *Local 25, Operating Engineers*, 338 F.2d 937 (3d Cir. 1964), *cert. denied*, 380 U.S. 935 (1965), and the other briefs herein

which seek reversal of the court below, demonstrate that the removal statute neither required nor justified the denial of remand. The court below attempted to justify its reading of the removal statute by concluding that if petitioner's suit were remanded the state court would be without jurisdiction to enjoin the strike. But this conclusion contravenes § 301 and the Congressional purpose to preserve state court jurisdiction in the same way and to the same extent as the conclusion it is meant to justify contravenes them. The essential fact of the matter is that the result reached by the court below cannot stand in the face of the Congressional intent, clearly embodied in § 301 and its legislative history, not to withdraw state jurisdiction to enjoin strikes in breach of collective bargaining agreements, but rather to supplement existing state remedies and thus ensure the full enforceability of such agreements.

CONCLUSION

The judgment of the court below denying remand should be reversed.

Respectfully submitted,

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